KPDES

KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM

PERMIT

AUTHORIZATION TO DISCHARGE UNDER THE
KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM

PERMIT NO.: KYG840000

AGENCY INTEREST NO.: 35050

Pursuant to Authority in KRS 224,

Mineral Mining and On-Site Processing Activities

is authorized to discharge from a facility located

Within any of the 120 counties of the Commonwealth of Kentucky

to receiving waters named

Those water bodies of the commonwealth that comprise the Mississippi and Ohio River basins and sub-basins within the political and geographic boundaries of Kentucky

in accordance with effluent limitations, monitoring requirements and other conditions set forth in this permit.

This permit shall become effective on March 1, 2020.

This permit and the authorization to discharge shall expire at midnight, February 28, 2025.

Date Signed: February 28, 2020

Paul Miller, P.E.
Director, Division of Water

THIS KPDES PERMIT CONSISTS OF THE FOLLOWING SECTIONS:

SECTION 1

COVERAGE

1. COVERAGE

Those facilities covered include establishments engaged in the extraction of mineral natural resources and the on-site processing of such minerals within the physical and political boundaries of the Commonwealth of Kentucky. Mineral mining operations include:

1) Mining of limestone and dolomite;
2) Mining of sand and gravel;
3) Dredging of river or creek sand and gravel;
4) Mining of clay;
5) Mining of rock asphalt; and
6) Mining of fluorspar and other vein minerals.

On-site processing activities include:

1) Classifying, crushing, sizing, and washing of the mined mineral;
2) Hot mix asphalt plants; and
3) Concrete ready-mix plants.

1.1. Eligibility

Only those mineral mining operations that have obtained a Surface Disturbance Mining Permit (SDMP) from the Division of Mine Reclamation and Enforcement (DMRE) or are in the process of obtaining a SDMP are eligible for coverage under this version of KYG840000 (KYG84). Hot mix asphalt plants and concrete ready-mix plants within the approved permit area of the SDMP and operated by the mineral mining permit holder, do not require separate Kentucky Pollutant Discharge Elimination System (KPDES) permits.

1.2. Exclusions

The following are excluded from coverage under this general permit:

1) Coal mining and processing activities;
2) Oil shale mining and processing activities;
3) Tar sand mining and processing activities;
4) Mineral mining and processing activities that discharge to or propose to discharge to a receiving water body that has been categorized as an “Impaired Water” for a pollutant or pollutants of concern that may be associated with the mineral mining activity, and for which an approved Total Maximum Daily Load (TMDL) has been developed;
5) Mineral mining and processing activities that discharge to or propose to discharge to a receiving water body that has been designated as a Coldwater Aquatic Habitat (CAH) as listed in 401 KAR 10:026, Section 5 Table C;
6) Mineral mining and processing activities that discharge to or propose to discharge to a receiving water body that has been designated as an Outstanding State Resource Water (OSRW) as listed in 401 KAR 10:026, Section 5 Table C;
7) Mineral mining and processing activities that discharge to or propose to discharge to a receiving water body that has been classified as an Outstanding National Resource Water (ONRW) or as an Exceptional Waters (EW) as listed in 401 KAR 10:030, Section 1 Table 1;
8) Offsite hot mix asphalt plants;
9) Offsite concrete ready-mix plants;
10) Any operation that disposes of solid or special wastes within the mining area; and
11) Mineral mining and processing activities that the Division of Water (DOW) has determined would be more appropriately addressed by an individual permit or an alternate general permit.

SECTION 2

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

2. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

This section of the permit establishes the KPDES effluent limitations and monitoring requirements for all outfalls listed in the Coverage Letter issued by the DOW granting authorization to discharge in accordance with the requirements of the KYG84.

2.1. Mine Dewatering

Controlled mine dewatering is water that is impounded or that collects in the mine and is pumped, drained or otherwise removed from the mine through the efforts of the mine operator. Non-controlled precipitation influenced mine dewatering is the discharge of water from the active mining area that occurs independent of the efforts of the mine operator. Such discharges may occur in response to a specific precipitation event or the accumulation of precipitation from several events.

Beginning on the effective date of this permit and lasting through the term of this permit, the discharge of controlled mine dewatering from mineral mining operations shall at a minimum, comply with the requirements in the following table.

Table 1. CONTROLLED MINE DEWATERING

Effluent Characteristic	Effluent Limitations					Monitoring Requirements	
	Units	Minimum	Monthly Average	Daily Maximum	Maximum	Frequency	Sample Type
Flow	MGD	N/A	Report	Report	N/A	2/Month	Instantaneous
Total Suspended Solids	mg/l	N/A	35	70	N/A	2/Month	Grab
pH	SU	6.0	N/A	N/A	9.0	2/Month	Grab
Oil & Grease	mg/l	N/A	10	15	N/A	1/Month	Grab
N/A means Not Applicable.							

Beginning on the effective date of this permit and lasting through the term of this permit, the discharge of non-controlled precipitation influenced mine dewatering from mineral mining operations shall at a minimum, comply with the requirements in the following table.

Table 2. NON-CONTROLLED MINE DEWATERING

Effluent Characteristic	Effluent Limitations					Monitoring Requirements	
	Units	Minimum	Monthly Average	Daily Maximum	Maximum	Frequency	Sample Type
Flow	MGD	N/A	Report	Report	N/A	2/Month	Instantaneous
Precipitation Volume	Inches	N/A	Report	Report	N/A	2/Month	Grab
Settleable Solids	ml/l	N/A	Report	0.5	N/A	2/Month	Grab
pH	SU	6.0	N/A	N/A	9.0	2/Month	Grab
Oil & Grease	mg/l	N/A	10	15	N/A	1/Month	Grab

2.2. Process Wastewaters

Process wastewater means any water used in the slurry transport of mined material, air emissions control, concrete truck washout, or other processing exclusive of mining.

Process wastewaters also include any other water which becomes commingled with such wastewater in a pit, pond, lagoon, mine or other facility used for treatment of such wastewater, but does not include wastewater used for the suction dredging of deposits in a body of water and returned directly to the body of water without being used for other purposes or combined with other wastewater.

There shall be no discharge of process wastewaters from Hot Mix Plants.

There shall be no discharge of process wastewaters from concrete ready-mix plants or mineral mining operations except when the permittee recycles the process wastewaters to the maximum extent practicable (MEP). Such discharges are subject to the requirements in Table 1. Outfalls that do not practice recycling to the MEP shall not discharge process wastewaters. No concrete washout material may be discharged into waters of the Commonwealth without going through treatment. Excess concrete is to be disposed of in designated concrete washout areas only. See Section 3 for more details designating the washout areas.

2.3. Dredge Return Water

Dredge return water from a sand dredging operation shall be returned to the dredge pit and not discharged to other waters of the Commonwealth.

2.4. Uncontaminated Stormwater Runoff

Stormwater runoff from undisturbed areas of the mineral mining operation shall be addressed under the Best Management Practices (BMP) Plan required in Section 3 of this permit.

2.5. Standard Effluent Requirements

The discharges to waters of the Commonwealth shall not produce floating solids, visible sheen on the surface of the receiving waters.

2.6. Asphalt Additives and Concrete Admixtures

There shall be no detectable quantities of any asphalt additive or concrete admixture in any discharge from the permitted facility. The preventive measure taken by the permit to insure that no such discharge occurs, shall be documented in the BMP Plan for the facility.

SECTION 3

BMP PLAN REQUIREMENTS

3. BEST MANAGEMENT PRACTICES (BMP) PLAN REQUIREMENTS

The permittee shall develop and implement a Best Management Practices (BMP) Plan consistent with 401 KAR 5:065, Section 2(4).

3.1. Applicability

These conditions apply to all permittees who use, manufacture, store, handle, or discharge any pollutant listed as: (1) toxic under Section 307(a)(1) of the Clean Water Act (CWA); (2) oil, as defined in Section 311(a)(1) of the Act; (3) any pollutant listed as hazardous under Section 311 of the Act; or (4) is defined as a pollutant pursuant to KRS 224.1-010(35) and who have operations which could result in (a) the release of a hazardous substance, pollutant, or contaminant, or (b) an environmental emergency, as defined in KRS 224.1-400, as amended, or any regulation promulgated pursuant thereto (hereinafter, the "BMP pollutants"). These operations include: material storage areas; plant site runoff; in-plant transfer, process and material handling areas; loading and unloading operations; and sludge and waste disposal areas.

3.2. Plan

The permittee shall develop and implement a BMP Plan consistent with 401 KAR 5:065, Section 2(4) [40 CFR 122.44(k)], which prevents or minimizes the potential for the release of "BMP pollutants" from ancillary activities through site runoff; spillage or leaks, sludge or waste disposal; or drainage from raw material storage.

3.3. Implementation

The permittee shall implement the BMP Plan upon the commencement of regulated activity. Modifications to the plan as a result of ineffectiveness or plan changes to the facility shall be implemented as soon as possible.

Within 90 days of the effective date of this permit, the permittee shall evaluate the current BMP Plan and make any necessary modifications to insure its continued effectiveness.

If the site is undisturbed, a BMPP shall be developed and implemented prior to any disturbance or chemical storage on site.

3.4. General Requirements

The BMP Plan shall:

1) Be documented in narrative form, and shall include any necessary plot plans, drawings, or maps.
2) Establish specific objectives for the control of toxic and hazardous pollutants.
   a) Each facility component or system shall be examined for its potential for causing a release of "BMP pollutants" due to equipment failure, improper operation, natural phenomena such as rain or snowfall, etc.
   b) Where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances which could result in a release of "BMP pollutants", the plan should include a prediction of the direction, rate of flow, and total quantity of the pollutants which could be released from the facility as result of each condition or circumstance.
3) Establish specific BMPs to meet the objectives identified under paragraph 2) b) of this section, addressing each component or system capable of causing a release of "BMP pollutants".
4) Include any special conditions established in part 2) b) of this section.
5) Be reviewed by engineering staff and the site manager.

3.5. Documentation

The permittee shall maintain a copy of the BMPP at the facility, and shall make the plan available upon request to Energy and Environmental Cabinet (EEC) personnel. This plan may be in a hard copy form or electronic copy accessible by signage that includes a website.

A copy of the DNR-approved mine plan along with a list of outfalls (latitude, longitude, receiving water, DNR sediment control structure identification, KPDES Outfall Number, and projected activation date) shall be kept on site.

3.6. Specific Requirements

The plan shall be consistent with the general guidance contained in the publication entitled "NPDES Best Management Practices Guidance Document", and shall include the following baseline BMPs as a minimum:

1) BMP Committee;
2) Reporting of BMP Incidents;
3) Risk Identification and Assessment;
4) Employee Training;
5) Inspection, Records, and Documentation;
6) Preventive Maintenance;
7) Good Housekeeping;
8) Materials Compatibility;
9) Security;
10) Materials Inventory;
11) Conditions of any 401 Water Quality Certification granted to the operation; and
12) Management of the stormwater runoff within the DNR permit boundary that is not directed to a sediment control structure.

3.6.1. Risk Identification and Assessment

The plot plan shall identify the locations of the concrete truck washout areas, and all storage and disposal areas for petroleum-based products and toxic or hazardous substances utilized on site.

3.6.2. Inspection, Records, and Documentation

The BMPP shall establish inspection schedules including procedures and frequencies, documentation requirements, and records retention locations where these records are available for review.

3.7. BMP Selection

BMPs shall be selected to address the major areas of concern and the management of petroleum-based products and toxic or hazardous substances. The selection, design, construction, implementation, operation, maintenance, and effectiveness of BMPs is a critical component to the operation’s CWA requirements. The permittee must be judicious in the selection of BMPs to prevent incompatible or counterproductive results. The BMPP shall describe the selected BMPs, provide the rationale for selection, and discuss the objective of the BMPs.

3.8. Modification

The permittee shall modify the BMPP whenever there is a change in the facility or change in the operation of the facility that materially increases the potential for the release of “BMP pollutants”.

3.9. Modification for Ineffectiveness

The BMPs and the BMPP shall be reviewed by the permittee and appropriate modifications implemented to utilize other practicable measures if the permittee determines the selected BMPs are not achieving the

general objective of preventing the release of “BMP pollutants”. A BMP review shall be done if any of the following events occur:

1) As a result of either a fixed or episodic event-driven evaluation;
2) As a result of an evaluation or inspection by Cabinet personnel, problems are identified; or
3) A release of any petroleum-based product, toxic or hazardous substance.

3.10. Groundwater Protection Plan (GPP)

The permittee may incorporate into the BMPP the elements of the GPP required by 401 KAR 5:037.

3.11. Spill Prevention Control and Countermeasure (SPCC) Plans

The BMPP may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under Section 311 of the Act and 40 CFR Part 151, and may incorporate any part of such plans into the BMPP by reference.

3.12. Hazardous Waste Management

The permittee shall assure the proper management of solid and hazardous waste in accordance with the regulations promulgated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1978 (RCRA) (40 U.S. Code 6901 et seq.). Management practices required under RCRA regulations shall be referenced in the BMPP.

SECTION 4

MONITORING AND REPORTING REQUIREMENTS

4. MONITORING AND REPORTING REQUIREMENTS

4.1. KPDES Outfalls

Discharge samples and measurements shall be collected at the compliance point for each KPDES Outfall identified in the coverage letter.

4.2. Compliance Point

The compliance point for each KPDES outfall is the nearest accessible point after final treatment, but prior to actual discharge to or mixing with the receiving waters or wastestreams from other outfalls.

4.3. Number of Required Samples

Monthly grab samples for each physical/chemical specific parameter shall be collected at the frequency identified in the applicable table of Section 2 of this permit during a period of discharge resulting from a precipitation or pumpage event.

4.4. Sample Collection

Samples and measurements taken to determine compliance with permit effluent limitations in Section 2 of this permit, shall be collected during periods of discharge and be representative of the volume and nature of the monitored discharge. The permittee may establish a sampling schedule provided the minimum number of samples specified are obtained. In the event the minimum number of samples cannot be obtained, the permittee shall provide the necessary documentation specified in Section 4.5 to the Cabinet upon request. Samples are to be collected from the compliance point and are not to be collected from within any sediment control structure.

4.5. No Data Reporting

If the permittee is unable to collect one or more of the required number of samples specified in Section 4.3, the permittee shall report the appropriate No Data Indicator (NODI) Code for each uncollected sample on the monthly DMR for that outfall. The permittee shall document its claim that only one, or no discharge occurred during the monitoring period. Such documentation shall be made available to the cabinet upon request. The use of a NODI Code is conditionally approved until such time as the Cabinet determines the submitted documentation for the use of that NODI Code is inadequate. When using a NODI Code, the permittee shall use the “Comments” field of the DMR to provide the additional documentation as requested to support the use of the NODI Code.

NODI Codes are used in EPA’s Integrated Compliance Information System (ICIS) to report No Data on a DMR. The following table lists the NODI codes that DOW has determined to be appropriate for use on mineral mining and on-site processing DMRs.

TABLE 10.

NODI Code	Definition
2	Operation Shutdown/Outfall Removed
5	Frozen Conditions
C	No Discharge
E	Analysis Not Conducted/No Sample
I	Land Applied
K	Natural Disaster
M	Laboratory Error
V	Weather Related

The circumstances under which each code is used and the required documentation in addition to the documentation and certification requirements of Sections 6.10 and 6.11 of this permit are as follows:

NODI Code 2

This code is to be used when the operation has been shut down as a result of enforcement action or bond forfeiture and the permittee is denied access to the site, or when the outfall has received approval from DNR to remove the pond and it has been physically removed from the site. Additional documentation to be available upon request shall include the notice issued by the enforcing agency denying access. The permittee shall note in the "Comments" field on the DMR, the date the outfall was removed.

NODI Code 5

This code is to be used when the discharge or outfall structure is frozen. Additional documentation to be available upon request includes: (1) dated photographs; and (2) a narrative of the severity and duration of the condition shall be included.

NODI Code C

This code is to be used when there are no discharges during the monitoring period.

NODI Code E

This code is to be used when no sample has been taken, or no analysis was conducted.

NODI Code I

This code is to be used when a sediment control structure does not discharge during a monitoring period due to the land application of the effluent. Additional documentation to be available upon request includes: (1) description of application area; (2) daily application rates; (3) daily precipitation volumes; and (4) the source of the precipitation data.

NODI Code K

This code is to be used when the outfall is destroyed or inaccessible due to a natural disaster such as flooding, tornado, etc. Additional documentation to be available on request includes: (1) dated photographs; and (2) a narrative of the severity and duration of the condition shall be included. The permittee shall note in the "Comments" field on the DMR, the natural disaster that occurred and date the outfall was destroyed or inaccessible.

NODI Code M

This code is to be used when the sample is deemed invalid due to laboratory error. The permittee shall note in the "Comments" field on the DMR, the laboratory error that occurred.

NODI Code V

This code is to be used when an outfall is inaccessible due to extreme weather conditions. Additional documentation to be available upon request includes: (1) a description of the weather conditions; (2) dated photographs of the conditions; and (3) duration of the conditions preventing access. The permittee shall note in the "Comments" field on the DMR, the weather event that occurred and the dates associated with the event.

4.6. Settleable Solids (SS) Testing Procedures

Fill an Imhoff cone to the one (1) liter mark with a thoroughly mixed sample. Allow to settle undisturbed for 45 minutes. Gently stir along the inside surface of the cone with a stirring rod. Allow to settle undisturbed for 15 minutes longer. Record the volume of settled material in the cone as milliliters per liter. Where a separation of settleable and floating materials occurs, do not include the floating material as settleable.

4.7. Sufficiently Sensitive Analytical Methods

Analytical methods utilized to demonstrate compliance with the effluent limitations established in this permit, shall be sufficiently sensitive to measure pollutant levels using the Minimum Reporting Level (MRL) which is at or below the required effluent limit. In the instance where an EPA-approved method does not exist that has a MRL at or below the established effluent limitation, the permittee shall use the EPA-approved method with a demonstrated MRL that is nearest to the established effluent limit. It is the responsibility of the permittee to demonstrate compliance with permit parameter limitations by utilization of sufficiently sensitive analytical methods.

MRL is defined as: The lowest concentration of an analyte (i.e. permit parameter) that can be reliably quantified that is greater than the method detection limit, of sufficient accuracy and precision to meet the intended purpose, and meeting acceptable quality control criteria for the analyte at this concentration. This defined concentration can be no lower than the concentration of the lowest calibration standard for that analyte or, in non-calibrated methods, the limitations defined by the equipment and volumes utilized.

Sufficiently Sensitive Method is defined by EPA in the Federal Register notice as:

1) The method minimum level (Kentucky defined as minimum reporting level – MRL) is at or below the level of the applicable water quality criterion or permit limitation for the measured pollutant or pollutant parameter;
2) In the case of permit applications, the method minimum level (MRL) is above the applicable water quality criterion, but the amount of the pollutant or pollutant parameter in a facility's discharge is high enough that the method detects and quantifies the level of the pollutant or pollutant parameter in the discharge; or

The method has the lowest minimum level (MRL) of the EPA-approved analytical methods.

4.8. Certified Laboratory Requirements

All laboratory analyses and tests required to demonstrate compliance with the conditions of this permit shall be performed by EEC certified general wastewater laboratories and EEC certified field-only laboratories. A list of certified laboratories can be obtained from the DOW Laboratory Certification Section.

4.9. Submission of DMRs

Monitoring results obtained during each monitoring period must be reported. The completed DMR for each monitoring period must be entered into, and submitted to the DOW approved electronic system no

later than midnight on the 28th day of the month following the monitoring period for which monitoring results were obtained.

For more information regarding electronic submittal of DMRs, please visit the Division's website at: https://eec.ky.gov/Environmental-Protection/Water/SubmitReport/Pages/NetDMR.aspx
or contact the DMR Coordinator at (502) 564-3410.

SECTION 5

OTHER REQUIREMENTS

5. OTHER REQUIREMENTS

5.1. Schedule of Compliance

The permittee shall attain compliance with all requirements of this permit on the effective date of this permit unless otherwise stated.

5.2. Other Permits

This permit has been issued under the provisions of KRS Chapter 224 and regulations promulgated pursuant thereto. Issuance of this permit does not relieve the permittee from the responsibility of obtaining any other permits or licenses required by this Cabinet and other state, federal, and local agencies.

5.3. Electronic Notice of Intent (eNOI) Requirements

5.3.1. eNOI

Operators seeking to obtain a new coverage, to modify an existing coverage, or to renew an existing coverage shall use DOW's electronic web based eNOI-KYG84 form. All related forms and documents are available at:
https://eec.ky.gov/Environmental-Protection/Water/PermitCert/KPDES/Documents/KYG84PermitPage.pdf

The eNOI link will take you to the Kentucky Online Gateway portal where you will be required to create an account to access the eForms. DOW shall not process any NOI that is incomplete, inaccurate, or in an incorrect format.

5.3.2. eNOI Contents

Electronic form eNOI-KYG84 is comprised of the following sections: (1) Permittee Information, (2) General Site Information, (3) Specific Site Information, (4) Outfall Information, (5) Other Environmental Approvals and Permit Information, (6) Discharge Monitoring Reports (DMRs), (7) NOI Preparer Information, (8) Attachments, and (9) Certification.

5.3.3. eNOI Submission Deadlines

Operators seeking initial coverage for a new facility shall electronically submit the eNOI-KYG84 form and required attachments (Mining map, USGS 71/2-minute quadrangle map with the facility location, line drawing showing water flow through the facility, and a completed Socioeconomic Demonstration Alternatives Analysis (SDAA) form) a minimum of 90 days prior to commencement of discharge.

Operators seeking modification of an existing coverage to address facility modifications shall electronically submit an updated eNOI-KYG84 form and required attachments (Mining map, USGS 71/2-minute quadrangle map with the facility location, line drawing showing water flow through the facility, and completed SDAA) a minimum of 90 days prior to the modification of the facility.

Operators seeking renewal of existing coverages shall electronically submit an updated eNOI-KYG84 form and Mining map within 90 days of the effective date of the permit. Failure to submit the updated eNOI-KYG84 form within the specified timeframe may result in the termination of coverage.

5.4. Continuation of Expiring Permit

This permit shall be continued in effect and enforceable after the expiration date of the permit provided that the permittee submits a timely and complete eNOI in accordance with 401 KAR 5:060, Section 2(4). However, new or expanded coverages cannot be authorized until the permit is reissued.

5.5. Antidegradation

For those discharges subject to the provisions of 401 KAR 10:030 Section 1(3)(b)5, the permittee shall install, operate, and maintain wastewater treatment facilities consistent with those identified in the SDAA submitted with the eNOI-KYG84.

5.6. Discharge and Monitoring Point Accessibility

The permittee is required to conduct monitoring that is representative of the regulated discharges. Additionally, in accordance with the conditions that apply to all permits as stated in Section 6.9 of this permit, the permittee shall allow authorized agency representatives to inspect the facility and collect samples to determine compliance. In order for such monitoring to be conducted either by the permittee or authorized agency personnel, all monitoring and discharge points required by this permit shall be readily and safely accessible.

5.7. Additional Conditions Specific to Mining Permits

The permittee shall notify the Director as soon as they know or have reason to believe that toxic pollutants not limited in the permit, have been or shall be discharged in excess of the highest of the following notification levels:

TABLE 11.

POLLUTANT	ROUTINE/FREQUENT	NON-ROUTINE/INFREQUENT
Any Toxic Pollutant	100 µg/l[1]	500 µg/l[1]
Acrolein	200 µg/l	500 µg/l[1]
Acrylonitrile	200 µg/l	500 µg/l[1]
2,4-dinitrophenol	500 µg/l	500 µg/l[1]
2-methyl-4,6-dinitrophenol	500 µg/l	500 µg/l[1]
Antimony	1 mg/l	1 mg/l
Pollutant reported in permit application	Five (5) times the maximum concentration value	Ten (10) times the maximum concentration value

[1]Or level established by the Director.

5.8. Commingling of Waste Streams

Where wastestreams from any drainage area covered by this permit are combined for treatment or discharge with wastestreams from another drainage area, the concentration of each pollutant in the combined discharge may not exceed the most stringent limitations for that pollutant applicable to any component wastestream of the discharge. This requirement is consistent with the requirements of 401 KAR 5:065, Section 2(9).

5.9. Reopener Clause

This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved in accordance with 401 KAR 5:050 through 5:080, if the effluent standard or limitation so issued or approved:

1) Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or
2) Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of KRS Chapter 224 when applicable.

5.10. Drinking Water Systems (DWS) Intake

In addition to the requirements of Section 2 of this permit, mineral mining and/or processing or sanitary component operations that discharge within 5 miles upstream of an existing domestic water supply intake, shall incorporate within the operation's BMPP, language addressing catastrophic releases and the notification procedures.

The language shall be included under the Specific Requirements Section of the BMP Plan and shall provide the following:

1) The criteria for determining a catastrophic release;
2) The notification method(s) to be used to inform the affected DWS intake that a catastrophic release has occurred;
3) The names, telephone numbers, and e-mail addresses of the contacts with the subject water supply; and
4) The names, telephone numbers, and e-mail addresses of the contacts with the permittee.

5.11. Outfall Signage

For discharges to the Ohio River, the permittee shall comply with the permanent marker requirements of the Ohio River Valley Water Sanitation Commission (ORSANCO)'s Pollution Control Standards.

This KPDES permit establishes monitoring points, effluent limitations, and other conditions to address discharges from the permitted facility. For discharges to receiving waters other than the Ohio River, the permittee should place and maintain a permanent marker at each of the monitoring locations, in an effort to better document and clarify these locations.

5.12. Stormwater Management

All stormwater runoff within the boundary of the SDMP Permit shall be, to the extent possible, diverted to sediment control structures. Stormwater that cannot be diverted shall be addressed under the BMP Plan. During the initial phases of site preparation, BMPs shall be employed to control sediment until permanent sediment control structures are constructed and placed in operation.

SECTION 6

STANDARD CONDITIONS

6. STANDARD CONDITIONS

The following conditions apply to all KPDES permits.

6.1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of KRS Chapter 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, modification, or denial of a permit renewal application. Any person who violates applicable statutes, who fails to perform any duty imposed, or who violates any determination, permit, administrative regulation, or order of the cabinet promulgated pursuant thereto shall be liable for a civil penalty as provided at KRS 224.99.010.

6.2. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit.

6.3. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action, that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

6.4. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

6.5. Proper Operation and Maintenance

The permittee shall at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems, which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

6.6. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, notification of planned changes or anticipated noncompliance does not stay any permit condition.

6.7. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

6.8. Duty to Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit.

6.9. Inspection and Entry

The permittee shall allow the Director or an authorized representative (including an authorized contractor acting as a representative of the Director), upon presentation of credentials and other documents as may be required by law, to:

1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by KRS 224, any substances or parameters at any location.

6.10. Monitoring and Records

1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities which shall be retained for a period of at least five (5) years (or longer as required by 401 KAR 5:065, Section 2(10) [40 CFR 503]), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

3) Records of monitoring information shall include:

a) The date, exact place, and time of sampling or measurements;
b) The individual(s) who performed the sampling or measurements;
c) The date(s) analyses were performed;
d) The individual(s) who performed the analyses;
e) The analytical techniques or methods used; and
f) The results of such analyses.

4) Monitoring must be conducted according to test procedures approved under 401 KAR 5:065, Section 2(8) [40 CFR 136] unless another method is required under 401 KAR 5:065, Section 2(9) or (10) [40 CFR subchapters N or O].

5) KRS 224.99-010 provides that any person who knowingly violates KRS 224.70-110 or other enumerated statutes, or who knowingly renders inaccurate any monitoring device or method required to be maintained under this permit, shall be guilty of a Class D felony and, upon conviction, shall be punished by a fine of not more than $25,000, or by imprisonment for not less than one (1) year and not more than five (5) years, or by both fine and imprisonment for each separate violation. Each day upon which a violation occurs shall constitute a separate violation.

6.11. Signatory Requirement

1) All applications, reports, or information submitted to the Director shall be signed and certified pursuant to 401 KAR 5:060, Section 4 [40 CFR 122.22].

2) KRS 224.99-010 provides that any person who knowingly provides false information in any document filed or required to be maintained under KRS Chapter 224 shall be guilty of a Class D felony and upon conviction thereof, shall be punished by a fine not to exceed twenty-five thousand dollars ($25,000), or by imprisonment, or by fine and imprisonment, for each separate violation. Each day upon which a violation occurs shall constitute a separate violation.

6.12. Reporting Requirements

6.12.1. Planned Changes

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in KRS 224.16-050 [40 CFR 122.29(b)];

2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under KRS 224.16-050 [40 CFR 122.42 (a)(1)]; or

3) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

6.12.2. Anticipated Noncompliance

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

6.12.3. Transfers

This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under KRS 224 [40 CFR 122.61]; in some cases, modification or revocation and reissuance is mandatory.

6.12.4. Monitoring Reports

Monitoring results shall be reported at the intervals specified elsewhere in this permit.

1) Monitoring results must be reported on a DMR or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.

2) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 401 KAR 5:065, Section 2(8) [40 CFR 136], or another method required for an industry-specific waste stream under 401 KAR 5:065, Section 2(9) or (10) [40 CFR subchapters N or O], the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.

3) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

6.12.5. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit, shall be submitted no later than fourteen (14) days following each schedule date.

6.12.6. Twenty-four Hour Reporting

1) The permittee shall report any noncompliance which may endanger health or the environment to the DOW Regional Office. Any information shall be provided orally within twenty-four (24) hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

2) The following shall be included as information which must be reported within twenty-four (24) hours under this paragraph:

a) Any unanticipated bypass which exceeds any effluent limitation in the permit [40 CFR 122.41 (g)].
b) Any upset which exceeds any effluent limitation in the permit.
c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within twenty-four (24) hours.

3) The Director may waive the written report on a case-by-case basis under 40 CFR 122.41 (l), if the oral report has been received within twenty-four (24) hours.

6.12.7. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under Sections 6.12.1, 6.12.4, 6.12.5 and 6.12.6, at the time monitoring reports are submitted. The reports shall contain the information listed above in Section 6.12.6.

6.12.8. Other Information

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

6.13. Bypass

6.13.1. Definitions

1) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

2) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

6.13.2. Bypass Not Exceeding Limitations

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Section 6.13.3 and 6.13.4 of this permit.

6.13.3. Notice

1) Anticipated bypass: If the permittee knows in advance of the need for a bypass, it shall submit prior notice, and if possible at least ten days before the date of the bypass.

2) Unanticipated bypass: The permittee shall submit notice of an unanticipated bypass as required in Section 6.12.6 of this permit.

6.13.4. Prohibition of Bypass

1) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

c) The permittee submitted notices as required under Section 6.13.3 of this permit.

2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three (3) conditions listed above in Section 6.13.4 of this permit.

6.14. Upset

6.14.1. Definition

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

6.14.2. Effect of an Upset

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations, if the requirements of Section 6.14.3 of this permit are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

6.14.3. Conditions Necessary for a Demonstration of Upset

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1) An upset occurred and that the permittee can identify the cause(s) of the upset;

2) The permitted facility was at the time being properly operated;

3) The permittee submitted notice of the upset as required in Section 6.12.6 of this permit; and

4) The permittee complied with any remedial measures required under Section 6.4 of this permit.

6.14.4. Burden of Proof

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.